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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/601,911      | 06/24/2003  | Mark Andrews         |                     | 7584             |

36559 7590 06/30/2004

DENNIS B. HAASE  
320 OUACHITA AVE., SUITE 313  
HOT SPRINGS, AR 72902

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/601,911

Applicant(s)

ANDREWS, MARK

Examiner

Michael Chambers

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 6/24/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the plate" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "the tee" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the tee" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 2-6,8-10, and 12 inherit the deficiencies of claim 1. Note, claim 12 refers to a "forth" standard, it is assumed this is a typo and "fourth" is the correct word.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, and 5-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Laseke. Laseke discloses a stand having a base (63) and an upstanding post (un-numbered post attached to stand 63).

a crossbar having a horizontal orientation (52); a series of strategically positioned standards mounted on said cross bar (55,51,56), said standards circumscribing an arc, which arc defines the proper position of the bat during various parts of the swing from a start position through contact with a ball as it passes over the plate (fig 4).

As to claim 2 : See lead lines 55,51,and 56.

As to claim 3 : See lead lines 55,51,and 56/47 which are mounted rear, midway and outermost as claimed.

As to claim 5 : Laseke discloses a flexible material attached to standard (fig 4, 3:24-26). See also standard 55 which includes the same material wherein the examiner takes the position that the material sleeve on standard 55 is the same as that on standard 51

As to claim 6 : See lead line 47.

As to claim 7 : The mere positioning of the batter laterally relative to the device in figure 4, which selectively positions the tee, simulates inside and outside pitches. Applicant does not claim any adjustment structure.

As to claim 8 : Laseke discloses standards that are adjustable (fig 4,55,56)

As to claim 9 : The front element (63) may be "pivoted" relative to the rear element (63) to allow the standard (56) to be adjusted relative to the batter to

Art Unit: 3711

accommodate the batter's arm length. Applicant does not claim any particular adjustment structure.

As to claim 10: Laseke discloses standards that are adjustable (fig 4,55,56).

As to claim 11: Laseke discloses a moveable tee (fig 4,47).

As to claim 12: Laseke discloses a fourth standard (fig 4,47). In as much structure as set forth by the applicant, item 47 may be considered a fourth standard.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Chambers whose telephone number is 703-306-5516. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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June 25, 2004

Michael Chambers  
Examiner  
Art Unit 3711

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700